

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JOSETTA JEFFERSON,

PLAINTIFF

v.

NO. 1:94CV51-A

GREAT SOUTHERN MERCANTILE CORPORATION,
d/b/a JR. FOOD MART OF AMERICA,

DEFENDANT

MEMORANDUM OPINION

The court has before it the motions of the defendant, Great Southern Mercantile Corporation, d/b/a/ Jr. Food Mart of America (“JFM”), to strike the affidavit of Anita Bradshaw and for summary judgment in its favor in the above-styled case. Plaintiff, Josetta Jefferson, contends that the defendant unlawfully discriminated against her by terminating her employment on the basis of race. Plaintiff also brings claims against defendant for slander based upon defendant’s statements to the Mississippi Employment Security Commission (“MESC”) in allegedly malicious interference with employment benefits, as well as for discharge in violation of defendant’s disciplinary action agreement. Plaintiff invokes this court’s jurisdiction under 28 U.S.C. § 1343, and, presumably, although not affirmatively stated, 42 U.S.C. § 2000e-5(f).¹

In accordance with the provisions of 28 U.S.C. § 636(c), both parties consented to have a United States magistrate judge conduct all proceedings in this case, including an order for entry of a final judgment. Therefore, the undersigned has authority to decide this motion for summary judgment. Since the court finds that there exist genuine issues of material fact and that defendant is not entitled to a judgment as a matter of law, the motion of the defendant shall be denied.

FACTUAL SUMMARY²

¹In their Pre-trial Order in this case, the parties represent to the court that there still exists a jurisdictional question as to the state law defamation claim.

²In ruling on a motion for summary judgment, the court shall not make credibility determinations, weigh the evidence or draw from the facts legitimate inferences for the movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202 (1986). Rather, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his

Defendant hired plaintiff, a black female, as an assistant manager of a JFM store in Columbus, Mississippi, in early 1991. Shortly thereafter, plaintiff was promoted to store manager. Her duties were to maintain the premises of the store, supervise employees and monitor and order inventory. As of the time of termination of her employment, plaintiff had received several bonuses and a raise. Plaintiff contends that a “Disciplinary Action Agreement” she had signed upon hiring amounted to an employment contract, the terms of which required that she receive warnings, written or verbal, before she could be discharged for many offenses. Plaintiff’s personnel file contained no written warnings regarding disciplinary action.

JFM’s stated policy was to distribute only one set of keys for each store and for the keys to remain with the store manager at all times. On May 18, 1993, plaintiff left the JFM store for the day, and as was her custom, she left her keys with her assistant manager, Jay Dayton, Jr. Dayton’s father, Jay Dayton, Sr., was plaintiff’s immediate supervisor. Sometime after midnight, plaintiff received a call from the store clerk on duty informing her of a burglary at the store. It appears that the thief found the keys in the store’s safe and stole approximately \$2400.00. On June 18, 1993, one month after the burglary, plaintiff was fired. Plaintiff contends that her termination was an act of racial discrimination on the part of the defendant. Plaintiff pursued the appropriate remedies through the state administrative channels, but the MESC denied her claims. After being issued a right-to-sue letter from the Equal Employment Opportunity Commission, plaintiff instituted the instant action.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c) (1995). The party seeking summary judgment carries the

favor. Anderson, 477 U.S. at 255. This factual summary is drafted in accordance with this holding.

burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. Celotex, 477 U.S. at 327. "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538 (1986); Federal Savings and Loan, Inc. v. Kralj, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the non-moving party. King v. Chide, 974 F.2d 653, 656 (5th Cir. 1992).

DISCUSSION

For plaintiff to prevail on her employment discrimination charge, she must prove four elements necessary to establish a *prima facie* case under McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), and its progeny. She must prove: (1) she is a member of a protected class; (2) she was qualified to manage the JFM store; (3) she was fired; and (4) after her discharge, JFM either hired a non-protected class member to replace her or retained a non-protected employee who had engaged in conduct similar to that for which plaintiff was terminated. Davin v. Delta Air Lines, Inc., 678 F.2d 567, 571 (5th Cir. 1982). Based upon the evidence before the court, the undersigned finds that plaintiff has demonstrated that there are genuine issues of material fact relating to the elements in contention, which are elements two and four. Plaintiff's bonuses and raise tend to show plaintiff was qualified for the position. Defendant's treatment of Alain Jacquot, a white store manager whom plaintiff contends engaged in similar conduct but was not fired, creates an issue of fact as to the fourth element. Therefore, defendant's motion for summary judgment as to plaintiff's race discrimination claim must be denied.

As to plaintiff's other claims for breach of the alleged employment contract and slander, the court finds that genuine issues of material fact exist as to them also. Upon review of the evidence as presented, the court is unable to determine whether there was an employment contract and, if so, whether defendant's actions constitute a breach of the alleged contract. There are also issues of fact concerning whether defendant's statements to the MESC were untrue and made in bad faith, which plaintiff contends would vitiate the qualified privilege accompanying such statements. Since these questions remain and should be submitted to a jury, defendant's motion for summary judgment as to the contract and defamation claims must be denied as well.

MOTION TO STRIKE AFFIDAVIT

Also before the court is defendant's motion to strike the affidavit of Anita Bradshaw. Defendant contends that various statements in the affidavit are not in conformity to Fed. R. Civ. P. 56(e) because they are not based upon Bradshaw's personal knowledge. The court agrees that certain statements were improperly included in the affidavit and would be appropriately stricken in different circumstances. However, as the trial in this matter is imminent and the court did not base its denial of defendant's motion for summary judgment on any of the statements contained in Anita Bradshaw's affidavit, defendant's motion to strike is effectively moot.

It is, therefore,

ORDERED:

- (1) That defendant's motion for summary judgment shall be, and it is hereby, dismissed.
 - (2) Defendant's motion to strike Anita Bradshaw's affidavit is declared to be moot.
- SO ORDERED, this the 17th day of July, 1995.

UNITED STATES MAGISTRATE JUDGE